In the United States Circuit Court of Appeals

FOR THE

NINTH CIRCUIT

ISOJIRO KITAGAWA, Appellant, vs. OLIVER T. SHIPMAN, Treasurer of the County of Hawaii, and County of Hawaii, Appellees.	No. 6454
MANA TRANSPORTATION COMPANY, LIMITED, an Hawaiian corporation, Appellant, vs. OLIVER T. SHIPMAN, Treasurer of the County of Hawaii, and County of Hawaii, Appellees.	No. 6455

UPON APPEALS FROM THE SUPREME COURT OF THE TERRITORY OF HAWAII

BRIEF OF APPELLEES

H. R. HEWITT, ESQ.,
Attorney General of the Territory of Hawaii,
C. NILS TAVARES, ESQ.,
E. R. McGHEE, ESQ.,
Deputy Attorneys General of the Territory of Hawaii,
W. H. BEERS, ESQ.,
County Attorney, County of Hawaii, and Deputy Attorney General,
Attorneys for Appellees.

LEON B. BROWN,
CARL S. CARLSMITH,
C. W. CARLSMITH,
M. L. CARLSMITH,
Solicitors and Counsel for Appellants.

INDEX.

CASES CITED AND STATUTES REFERRED TO.

In the United States Circuit Court of Appeals

FOR THE

NINTH CIRCUIT

ISOJIRO KITAGAWA, Appellant, vs. OLIVER T. SHIPMAN, Treasurer of the County of Hawaii, and County of Hawaii, Appellees.	No. 6454
MANA TRANSPORTATION COMPANY, LIMITED, an Hawaiian corporation, Appellant, vs. OLIVER T. SHIPMAN, Treasurer of the County of Hawaii, and County of Hawaii, Appellees.	No. 6455

UPON APPEALS FROM THE SUPREME COURT OF THE TERRITORY OF HAWAII

BRIEF OF APPELLEES

SUPPLEMENTARY STATEMENT OF FACTS

The facts will not be repeated at length here. They are set forth in the pleadings and partially in the appellants' brief. One correction of the statement of facts made in appellants' brief, page 4, appears called for. The Territorial Supreme Court in the majority opinion held that:

> "The allegation in the petition in the Kitagawa case that the vehicles 'are not used upon the public

highway' must be deemed to be qualified by the further allegation, in the same petition, that these second-hand vehicles constitute a part of the stock in trade of the petitioner whose business is to buy and sell automobiles and whose purpose and daily effort is to sell these particular sixteen" (eighteen?) "automobiles at the earliest possible dates. It is matter of common knowledge that in the effort to sell automobiles, whether used or unused, the machines are necessarily taken and driven upon the highways in order to demonstrate to the prospective purchasers their power and their fitness generally for use. It is apparent from all of the allegations of the petition that while at times these sixteen vehicles are at rest in the garage of the owner, they are at other times taken upon the highways for use thereon and are intended and desired by the present owner and the purchasers from him for use on the highways at frequent intervals."

Other facts will be later noted in their proper places, where necessary in the argument.

The statute, the constitutionality of which is attacked, is Section 1306 of the Revised Laws of Hawaii 1925, as amended by Act 180 of the Session Laws of Hawaii 1925 and by Acts 33, 172 and 246 of the Session Laws of Hawaii 1927, reading in full as follows:

"Sec. 1306. *Motor vehicle tax.* All automobiles and other power-driven vehicles (all such vehicles being hereinafter referred to as motor vehicles) shall be subject to an annual tax of one per cent for each pound in weight of such motor vehicle, to be paid by the owners thereof, which tax shall be collected by the treasurer or his deputy of the county or city and county as the case may be, and shall become due and payable on the first day of January and must be paid before the

first day of March in each year. In determining the amount of tax for motor vehicles, the weight taken shall be that of such motor vehicles when in ordinary use and with all its accessories and fittings, including fuel and water. *Provided,* however, that whenever it shall be made to appear to the treasurer, or his deputy, that any motor vehicles have been acquired subsequent to January first of the current year by the person seeking to register the same, the tax to be paid thereon shall be as herein provided, less eight and one-third per centum of such tax for each month of the then calendar year which shall have elapsed at the date said motor vehicle was acquired. *Provided,* further, that motor vehicles owned and brought into the Territory for temporary use therein by non-residents of the Territory shall be exempt from the provisions of this chapter relative to the payment of taxes and display of number plates for a period of three months from the date of entry of such vehicle into the Territory, if such non-resident has complied with the law of the state or country of his domicile relative to the payment of taxes and registration, and shall display on such vehicle the number plates for the current year required by the law of such state or country. Upon receipt of such tax the treasurer or his deputy shall number and register such motor vehicle in the owner's name in a permanent record or book to be kept by him for this purpose, and shall furnish the owner thereof with a receipt which shall show upon its face the license number of such motor vehicle, and shall state the fact that the tax has been paid thereon for the whole or the remainder of the current year in which the receipt is issued. The treasurer or his deputy shall also furnish the owner with two number plates for such motor vehicle with the number and year marked thereon, charging therefor in addition to the tax the sum of one dollar. The owner shall attach such number plates to such motor vehicle, one on

the front and the other on the rear thereof, which number plates shall be securely fastened to the motor vehicle in such a way as to prevent such number plates from swinging and at a minimum of sixteen inches from the ground. All such number plates shall be so placed that they shall be plainly visible.

"*Provided* further that if any person, who has paid an annual motor vehicle tax, intends to remove from this territory the vehicle on which said tax has been paid and not to bring it back to the territory during the same calendar year, he shall, upon presenting to the treasurer or his deputy, a signed and sworn certificate, stating the intention aforesaid, the date of intended shipment of the motor vehicle, the name of the steamer or vessel by which said shipment is intended, and such other relevant facts as may be required by the treasurer, and upon surrendering his number plate, become entitled to a refund of a portion of said tax, computed at the rate of eight and one-third per centum of the annual tax for each integral month of the prospective absence of said motor vehicle from the territory during the remainder of the calendar year for which the tax has been paid. Provided further, that upon the making of said refund, and after the date of intended shipment from the territory stated in the certificate aforesaid, the motor vehicle in question shall be deemed an unlicensed vehicle and shall only be readmitted to this territory during the same calendar year upon payment to the treasurer or his deputy of the entire amount of the tax refunded as aforesaid. *Provided,* however, that motorcycles shall be required to display only one number plate which shall be fastened to the rear thereof. After the initial payment of the tax herein specified, a motor vehicle shall not be required to be reweighed in any succeeding year, unless the same has been so alterd or changd as to increase or diminish the weight thereof. The treasurer shall immediately notify

the sheriff of the county or city and county of numbers issued by him with a general description of the motor vehicle and the name and address of the owner to whom issued. The sheriff of the county or city and county shall record such numbers, description of motor vehicles and names and addresses of the owners to whom such numbers are issued in a permanent record or book to be kept by him for this purpose.

"All new motor vehicles in stock for purposes of sale shall be, for a period of three (3) months only, and all publicly owned motor vehicles, and all motorcycles owned by motor cops or police officers of the Territory, or of any County or City and County, and actually used by them in their travel on official business, shall be exempt from the tax herein provided for, and number plates for all such motor vehicles or such motorcycles may be issued as now or hereafter provided by ordinances of the County or City and County.

"The number plates hereinabove referred to and as hereinafter described shall be uniform throughout the Territory and shall be used on all motor vehicles upon which a tax is paid pursuant to this section. All such number plates shall bear the word 'Hawaii', shall be of different color or shade each year with a distinct contrast between the color of the plates and the numerals and letters thereon, and shall be of such size, shape and color and with such arrangements of letters and numerals as may, subject to the provisions of this section, be determined by the secretary of the Territory. On or before the first day of October, the secretary shall annually notify the several treasurers of the counties and city and county of his determination in regard to the size, shape, color and arrangement of letters and numerals of such plates and the numbers to be used in each county or city and county. The numerals on all such number plates shall not be less than four inches in height and the strokes thereof not less than one-

half inch in width, except in the case of motorcycles, in which case such numerals shall be not less than one inch in height and the strokes thereof not less than one-eighth inch in width.

"It shall be the duty of the boards of supervisors of the several counties and city and county to purchase a sufficient number of such plates for use in such county or city and county.

"Any motor vehicle not having the number plates required by this section, or any motor vehicle upon which taxes are delinquent as hereinbefore provided, may be seized wherever found by the treasurer, his deputy or by any sheriff, or deputy sheriff, or by any police officer, or any person acting on behalf of such treasurer, or deputy treasurer; and held for a period of ten days, during which time such motor vehicle shall be subject to redemption by its owner by payment of the taxes due, together with a penalty of one dollar and the cost of storage and other charges incident to the seizure of such motor vehicle. The treasurer, or his deputy, or the sheriff, or deputy sheriff, or police officer, of any county or city and county, or any person acting on behalf of such treasurer, or deputy treasurer, shall be deemed to have seized and taken possession of any motor vehicle as aforesaid, after having securely sealed same where located and having posted a notice upon such property, setting forth the fact that the same has been seized for taxes and warning all persons from molesting same under penalty to be provided. All persons molesting or disturbing the motor vehicle so seized shall be subject to the penalty hereinafter provided. All motor vehicles so seized and sealed as aforesaid shall remain at the place of seizure or at such other place as the treasurer, or his deputy, may direct, at the expense and risk of the owner. If the owner of any such motor vehicle shall fail to redeem the same within ten days after such seizure such motor vehicle may be sold by the treasurer, or his deputy, at

public auction to the highest bidder for cash, after giving ten days' public notice thereof in a newspaper of general circulation published in such county or city and county, or by posting notices thereof in at least three public places in the district where such motor vehicle was seized. The amount realized at such sale, less the amount of the tax and penalty due, together with all costs incurred in advertising, storing and selling the same and all other charges incident to such seizure and sale, shall be paid to the owner of such motor vehicle. If no claim for such surplus shall be filed with the treasurer within sixty days from the date of such sale, such surplus shall be paid into the county or city and county treasury as a governmental realization and all claim to such sum shall thereafter be forever barred.

"Any person who shall attach to and use on any such motor vehicle any number plates not furnished in accordance with the provisions of this section, or who shall fraudulently use such number plates upon any other vehicle other than the one for which such number plates were issued, or who shall molest or disturb any motor vehicle, which has been seized pursuant to this section, or any treasurer, or deputy treasurer who shall issue a certificate of registration or number plates to any person who has not paid the tax required by this section, or any person who shall violate any of the provisions of this section, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine not exceeding five hundred dollars ($500.00). (L. 1896, c. 51, s. 8; C. L., s. 811; R. L., s. 1203; am. L. 1905, c. 89, s. 3; am. L. 1909, c. 136, s. 1; am. L. 1911, c. 146, s. 5; R. L. 1915, s. 1228; am. L. 1917, c. 135, s. 1; am. L. 1921, c. 198, s. 1; am. L. 1925, c. 180, s. 1; am. L. 1927, c. 33, s. 1; am. L. 1927, c. 172, s. 1; am. L. 1927, c. 246, s. 1.)"

Any references in this brief to the Record refer to the Record in the Kitagawa case, No. 6454.

The Territorial Supreme Court held the tax imposed by this section to be valid, the majority opinion holding, with the qualifications hereinafter noted, that "the tax, in addition to being an exercise of the police power, is imposed on the privilege of using these vehicles on the public highways * * *" (Record, p. 49), and the minority concurring opinion holding that the tax "is a specific tax, provided, with respect to all property within the class therein named, in lieu of the general property taxes * * *; that its primary purpose is to provide public revenue, and that it is for the foregoing reasons in part at least a property tax. But even so it is a tax upon property requiring a distinct classification for the reason that the property thereby taxed is properly subject to the important license and police regulatory provisions set forth in the majority opinion, and for the further reason that the registration, transfer, and use on the public highways of such property are subject to the more extensive police regulations provided by Act 197, L. 1929." (Record, pp. 51-52.)

We shall show, later on in this brief, that the majority and minority opinions of the Territorial Supreme Court are reconcilable both in theory and in result.

APPELLEES' CONTENTIONS

The contentions of appellees herein will be that the tax is valid (1) whether it be regarded as a property tax, (2) whether it be viewed as primarily an excise tax, or (3) whether it be held to be a combined property tax, excise tax and police measure.

I.

THE TAX IMPOSED BY SECTION 1306, REVISED LAWS OF HAWAII 1925, AS AMENDED, EVEN IF VIEWED AS A PROPERTY TAX IS VALID AND DOES NOT CONTRAVENE THE FIFTH AND/OR FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION.

It is the contention of the appellants that this section imposes a "property tax" and not an excise tax; that the amount of the tax is not computed according to the value of each motor vehicle taxed—that is, *ad valorem*—and that therefore the tax is unconstitutional as violating the Fifth and/or Fourteenth Amendments to the United States Constitution.

This contention is based upon a false premise, namely, that the Fifth and/or Fourteenth Amendments require that all property taxes be levied on an *ad valorem* basis. Appellants intimate in their brief that the Fourteenth Amendment may be applicable to the Territory, but base their main contention on the ground that the Fifth and Fourteenth Amendments have substantially the same effect in so far as the instant question is concerned, and that it is therefore unnecessary to hold that the Fourteenth Amendment applies. (Appellants' Brief, pp. 34-41.)

A. IN THE ABSENCE OF CONSTITUTIONAL PROVISIONS EXPRESSLY REQUIRING IT, PROPERTY TAXES NEED NOT BE AD VALOREM.

That the appelalnts' premise is false can easily be demonstrated. If the *Federal Constitution,* particularly the Fifth and Fourteenth Amendments required all property taxes to be *ad valorem,* as is

contended by appellants, there could be no "specific taxes" in the United States. But the very fact that specific taxes are recognized in all text books on taxation as one of the accepted classifications of property taxes particularly opposed to *ad valorem* taxes, indicates that such is not the case.

A specific tax is defined as "a tax which imposes a specific sum by the head or number, or some standard of weight or measurement, which requires no assessment beyond a listing and classification of the objects to be taxed." *36 Cyc. 796.* Similar definitions may be found in all text books on taxation as well as numerous decisions.

Many State constitutions contain provisions expressly requiring property taxes to be levied on an *ad valorem* basis. If the Federal Constitution required the same thing it would be unnecessary to put such provisions in the State constitutions.

Other State constitutions, like that of Michigan, for instance, provided expressly for the levying of specific, as opposed to *ad valorem* property taxes. See *Pingree* v. *Auditor General,* 120 Mich. 95, 78 N. W. 1025, 44 L. R. A. 679; *Union Trust Co.* v. *Wayne Probate Judge,* 125 Mich. 487, 84 N. W. 1101. There would be no point in so doing if specific taxes could not be laid in any event under the Federal Constitution.

It is to be noted that the Fifth Amendment was finally ratified in 1791. Shortly thereafter Congress passed the Act of June 5, 1794, entitled "An Act laying duties upon carriages for the conveyance of persons." This Act was not levied according to the value of each carriage, but was fixed at an arbitrary sum per carriage, graduated according to the make thereof. It was attacked as constituting a "direct tax" within the meaning of Art. I, Sec. 8, United

States Constitution, and therefore unconstitutional because not apportioned according to population in the several states. The United States Supreme Court held it not to be a "direct tax", within the meaning of said Section, going on the ground that the framers of the Constitution could not have intended by that term to include therein any tax which from its nature was not practically susceptible of apportionment according to population. *Hylton* v. *U. S.* (1796), 3 U. S. 171, 1 L. Ed. 556. Although the Fifth Amendment had just been ratified no question seems to have been entertained for a moment that such a tax was of doubtful validity because not levied *ad valorem.* To be sure, it was called a "duty", but what real distinction can be found between such a tax and one levied on automobiles, like our weight tax? If, as was held in that case, *carriages* are "consumable commodities" and as such subject to duties not levied *ad valorem* (and note that the tax in that case was not on *imports,* but upon *all* carriages for the conveyance of persons in the United States), are not automobiles then "consumable commodities" and as such subject to the same rule? Note, in this connection that the United States Supreme Court, in the last mentioned case held that "the term duty, is the most comprehensive next to the generical term tax." As a matter of fact, in so far as "consumable commodities" are concerned, we submit, there is no real distinction between "duties" levied thereon and "specific taxes" imposed on them.

There is nothing in the United States Constitution forbidding States to levy duties except the limitations of Art. I, Sec. 10, which section provides in part, that:

"No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing its inspection Laws, and the net Produce of all Duties and Imposts laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Controul of the Congress.

"No State shall, without the Consent of Congress, lay any Duty of Tonnage, * * *."

States may, therefore, lay specific taxes or duties on consumable commodities so long as the duties do not constitute duties on imports or exports, or tonnage duties, as such, and do not burden interstate commerce, or otherwise interfere with Federal powers or functions. And such duties need not be *ad valorem,* else many Federal duties would be invalid.

And if a State may levy such duties, the Territory may also do so, for it has been held that the Territory's power to tax, under the Hawaiian Organic Act, Section 55, is practically as great as that of a State.

Keola v. *Parker,* 21 Haw. 597, 600, 601.
In re Craig, 20 Haw. 483, 490.
Peacock v. *Wright,* 1 U. S. D. C. Haw. 294, 298.
See, also: *Peacock* v. *Pratt,* 121 Fed. 772, 5 C. C. A. 48.
Rice v. *Hammond,* 19 Okla. 419, 91 Pac. 698.

It matters not what the tax imposed upon motor vehicles by Section 1306, Revised Laws of Hawaii 1925 is called, for we agree with appellants that the substance of the statute should control, and we submit that if there is a reasonable, logical theory upon which the tax can be sustained, the courts should indulge in such theory and sustain the tax.

"It is elementary when the constitutionality of a statute is assailed, if the statute be reasonably susceptible of two interpretations by one of which it would be unconstitutional and by the other valid, it is our plain duty to adopt that construction which will save the statute from constitutional infirmity."
U. S. v. *Delaware & H. Co.*, 213 U. S. 366, 53 L. Ed 836, 849.

In *37 Cyc.* the rule as to necessity for property taxes to be levied on an *ad valorem* basis is stated as follows:

"The power of taxation rests upon necessity, and is an essential and inherent attribute of sovereignty, belonging as a matter of right to every independent state or government, and it is as extensive as the range of subjects over which the power of that government extends. As to such subjects and *in the absence of constitutional restrictions the power of taxation is practically absolute and unlimited, the only security against an abuse of the power being found in the structure of the government itself in that in imposing a tax the legislature acts upon its constituents.*" (Italics ours.)
37 Cyc., pp. 715-716.

"There are also in the different state constitutions various provisions relating expressly to taxation, *such as the provisions requiring equality and uniformity in taxation, or taxation according to value, or imposing restrictions as to its purpose, or as to its rate or amount.* * * * The power of taxation being essential to government, and being usually confided in the largest measure to the legislative discretion, *constitutional limitations upon its exercise will not be inferred or implied, but must be distinctly and positively expressed.* * * * *In the absence of constitutional resistric-*

tions the power of the legislature in regard to taxation is practically absolute and unlimited, so long as it is exercised for public purposes, and taxes may be imposed which are not equal, uniform, or according to value; and while such taxation may be unwise, inequitable, or oppressive, it cannot merely upon this ground be declared unconstitutional, the proper remedy being by appeal to the legislature and not to the courts." (Italics ours.)
37 Cyc., pp. 727-728.

"The constitutions of many of the states contain the requirement that taxation shall be equal and uniform, that all property in the state shall be taxed in proportion to its value, that all taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax, or that the legislature shall provide for an equal and uniform rate of assessment and taxation; and in the face of such provisions a tax law which violates the prescribed rule of equality and uniformity is invalid. * * * *In the absence of such a constitutional requirement it is not essential to the validity of taxation that it shall be equal and uniform, and in such a case a tax law cannot be declared unconstitutional merely because it operates unequally, unjustly, or oppressively."* (Italics ours.)
37 Cyc., pp. 729-730.

And even in *Cooley on Taxation,* so much relied upon by appellants, it is stated:

"Another classification of taxes is as specific or ad valorem. An ad valorem tax is a tax upon the value of the article or thing subject to taxation. A specific tax is one which imposes a specific sum by the head or number, or by some standard of weight or measurement, and which requires no assessment beyond a listing and classification of the subjects to be taxed. * * * Property taxes

may be either specific or ad valorem, although they are almost invariably ad valorem, and in some states the constitution forbids property taxes other than ad valorem. * * *" (Italics ours.)
1 Cooley, Taxation (ed. 4), Sec. 52, pp. 143-144.

In *R. C. L.* (also much relied upon by appellants) it is stated:

"Taxes are either specific or ad valorem. Specific taxes are of a fixed amount by the head or number, or by some standard of weight or measurement and require no assessment other than a listing or classification of the subjects to be taxed. * * * Property taxes *may be either specific* or ad valorem, but at the present time are almost invariably ad valorem. When the constitution of the state requires uniformity or proportionality in taxation, property taxes must of necessity be ad valorem, since value is the only possible basis of uniformity with respect to property of widely different character. * * * (Italics ours.)
26 R. C. L., pp. 37-38.

In the case of *State ex rel City of Fargo* v. *Wetz*, 40 N. D. 299, 168 N. W. 835, 5 A. L. R. 731, cited in the concurring opinion of Parsons, J., in the instant case (Record, p. 54), it was held that the State could, in the face of a State constitutional provision requiring that "taxes shall be uniform upon the same class of property, including franchises within the territorial limits of the authority levying the tax", and providing for exemption from taxes of "personal property to an amount not exceeding in value $200 for each individual liable to taxation", levy a license tax in lieu of all other taxes, including general property taxes.

In the course of its decision, in order to demonstrate that the so-called license tax was in reality a

combined license and property tax, that is, included, in addition to the license feature a property tax, and so did not exempt the personal property so taxed from general property taxes in violation of the $200 constitutional limitation of exemptions above quoted, the court, per Birdzell, J., said:

> "But unless it is included in the fee, there cannot be said to be any tax upon the property, and the act cannot stand because of the express provision of sec. 176, limiting the power of the legislature to exempt property from taxation. Can it be said that the legislature, by determining upon a policy of substituting a license fee for a tax, has in effect determined that the property is not exempt? In the absence of constitutional requirements to the contrary, the power of the legislature to provide for an equitable adjustment of tax burdens, in such a way as to take into consideration other burdens placed upon a given class of property, cannot be disputed. If the legislature deems it appropriate to single out a given class of property, and to require that the owners of that property, who, as a class, derive most benefit from the proper performance of a given governmental duty, must contribute most to the legitimate cost of its maintenance, and that they may be favored by a corresponding reduction of other burdens, it cannot be said that the property subject to the particular burden is exempt from taxation. The most that can be said is that it is singled out for special treatment, and taxed according to a method that is thought to be more appropriate for measuring the relative burden than would be the case if it were taxed according to valuation. There is no particular magic in a name, or even in a legislative designation of a particular form of taxation. Though the legislature may call that which is distinctly a tax by some other name, it nevertheless remains a tax. * * * This proposition is equal-

ly applicable to this case. That which is imposed as a license fee may be in reality both a tax upon the property and a fee. Here it was clearly intended as such.

"* * * Viewed in the light of the ample powers of classification given to the legislature, of the known limitation upon the right to exempt personal property, of the declared intention to make the tax in question one in lieu of all other taxes, and of the evident attempt to make the new tax one that should approximately equal both the original tax and the license fee, we are impressed that *the law in question imposes both a property tax levied according to a permissible standard* and a reasonable license fee. The act consequently does not violate sec. 176 of the Constitution, concerning exemptions.

"* * * *Much of the argument of counsel for the petitioner seems based upon the hypothesis that the constitution precludes taxation of any other character than a property tax levied upon ad valorem assessment.* It is doubtless true that, under the constitution as it stood prior to the amendment, no other tax upon property than one levied upon an *ad valorem* assessment at a uniform valuation was contemplated. But, under sec. 176 as amended, the only requirement is one of uniformity within a class. In some of the states, Georgia, for instance, the constitution provides not only that taxation shall be uniform upon the various classes of subjects within the territorial limits of the authority levying the tax, but in addition contains the express requirement that property taxation shall be *ad valorem.* * * * Had it been desired to limit the power of the legislature to prescribe property taxes in such a way as to permit no other kind of tax except one levied upon an *ad valorem* basis, it would seem that such a limitation would have been expressed in sec. 176. *In the absence of such a provision, it cannot be held that the legislature is precluded from laying*

a property tax upon any basis that will exact contributions according to an equitable standard, and one which is free from the vice of arbitrary classification." (Italics ours.)
5 A. L. R., pp. 745-747.

In the case of *Bell's Gap R. R. Co.* v. *Pennsylvania* (1890), 134 U. S. 232, 33 L. Ed. 892, the United States Supreme Court upheld a state property tax levied upon all bonds and other securities issued by corporations at the rate of three mills on the dollar of the *nominal* or *par value.* The tax was certainly not levied according to *actual value* in that case.

Finally, in the case of *Honolulu Rapid Transit Co.* v. *Wilder,* (1929), 36 Fed. (2d) 159, recently decided by this Court, a tax that was admittedly, in part at least, a property tax, was upheld although *based on an arbitrary valuation, to-wit, the par value of its outstanding capital stock,* which was admittedly three-quarters of a million dollars in excess of the actual value of the property of the corporation.

The cases cited in appellants' brief (pp. 41-45) in support of the proposition that property taxes in order to be valid must be imposed on an *ad valorem* basis, *are all based upon State constitutional provisions, which specifically require such basis for property taxes.* And the quotations from *26 R. C. L.* 244, and *Cooley on Taxation,* 4th Ed., Vol. I, pp. 620-622 and p. 347 (Appellants' Brief, pp. 42-44), are so obviously based upon express State constitutional provisions expressly requiring *ad valorem* taxation or equality and uniformity in taxation of property, that we consider it unnecessary to more than mention that fact to this Court and refer the Court to *26 R. C. L.,* p. 242, and *Cooley on Taxation* (4th Ed.), Vol. I, pp. 345 and 545, where it is explained that

practically all of the States have *State* constitutional provisions to that effect.

There is nothing in the United States Constitution or in the Hawaiian Organic Act (which, with the Federal Constitution, is to the Territory what the State constitution is to the State) which requires property taxes to be *ad valorem*. The authorities so cited, therefore, are not in point.

In concluding this branch of the argument, it is submitted that, under the authorities hereinbefore cited, the tax imposed by Section 1306, Revised Laws of Hawaii 1925, as amended, is amply sustainable even as a "property tax", provided the classification adopted by the legislature therefor is reasonable. This qualification—as to reasonableness—will be taken up later in this brief. (See pp. 35-48, *infra*.)

II.

THE TAX, CONSTRUED IN ACCORDANCE WITH THE THEORY ADVANCED BY THE MAJORITY OPINION BELOW, IS VALID.

Coming, now, to the majority opinion of the Territorial Supreme Court (Record, pp. 40-51), we find that a large portion of appellants' brief (pp. 10-33) is devoted to an attempt to prove that this opinion was wrong in its diagnosis of the nature of the tax imposed by Section 1306, and that the tax is a property tax and not an excise and police measure. Much of appellants' brief is also devoted to defining and distinguishing between excise taxes and property taxes. We are quite willing to admit that in theory there is a difference between a "property tax", pure and simple, as defined in appellants' brief, and an "excise tax", pure and simple, as also so defined. We

have no quarrel with many of the theories so ably expounded therein, as to the nature and differences of the two kinds of taxes. It is in the practical application of those theories to the actual tax, to the actual facts, in this case, that we differ.

A. CERTAIN FACTUAL STATEMENTS IN APPELANTS' BRIEF DISCUSSED.

On page 13 of appellants' brief appears one purported statement of fact which seems to require special mention. It is there stated:

> "* * * On the large plantations of the Territory of Hawaii are many motor vehicles whose use is confined to private roads constructed by the owners thereof and which are never used beyond the confines and limits of those plantations. These motor vehicles are taxed under the act."

Where, we wish to ask, *is there any justification in the record in this case—in any facts properly before this Court—for that statement?* And *why,* if that statement is true, is it that none of those poor, oppressed plantations has seen fit, in the quarter of a century during which this tax has been in force, to appeal even once to the Territorial courts for relief on that ground? We question the correctness of that statement, both on and off the record.

On the same page (13) of said brief, appears also this statement:

> "On many used car lots, such as those of the appellant Kitagawa, are to be found motor vehicles which will never, within a particular taxable year, see use on the public highways or any use whatsoever."

Beyond a good "depression" argument off the record, we can find little to support that statement.

B. CONTENTIONS OF APPELLANTS AS TO NATURE OF THE TAX ARE IMMATERIAL.

If (as we believe has already been demonstrated), the tax in question is sustainable as a property tax, even though not levied *ad valorem,* or even if it is sustainable as a property and excise tax and/or police measure combined, as held in the concurring opinion below, appellants' arguments to the effect that the majority opinion below was wrong in its diagnosis of the tax would seem to be immaterial. It makes no difference what kind of measure the Territorial Supreme Court held the tax to be, if, properly classified and labeled as a "property tax" (as appellants contend it to be), it is nevertheless valid.

C. THEORY OF THE MAJORITY OPINION.

However, let us analyze the majority opinion. It recites: (1) that taxes based on the weight of motor vehicles are not a novelty; (2) that motor vehicles have necessitated stronger, better and enormously more expensive roads than before their advent, and should contribute to the cost of such roads; (3) that taxes of this nature are "designed in part at least to secure compensation to the community that builds the roads and to secure it with some approach to a due proportion as between the vehicles or owners thereof who contribute the tax;" (4) that heavier vehicles in general are more destructive of roads than lighter ones; (5) that the purpose of the tax may also be to regulate, under the police power; (6) that larger and heavier vehicles as a rule are more difficult to control and more destructive than smaller ones; (7) that these vehicles necessitate increased police surveillance and court action; that

the legislature evidently deemed it impracticable to base the tax upon extent of use of the highways by the vehicles; and that "the legislature would be justified in proceeding upon the theory that if an automobile is possessed which is in perfect condition for use it is intended for use on the public highways and will be so used." (Record, pp. 44-45, 49.) Then follows this statement:

> "* * * *that the tax is not (aside from its regulatory aspects) a tax on property is obvious from the fact that the mere weight of automobiles does not bear any relation to their values.* * * * *The tax, in addition to being an exercise of the police power, is imposed on the privilege of using these vehicles on the public highways,*—vehicles which * * * not only require expensive highways, but also endanger persons and property and necessitate added police protection—and does not apply or is not imposed on vehicles which, lacking vital parts, clearly are not intended for use on the highways and, in truth, are not 'automobiles' or 'power-driven vehicles.' This latter class of vehicles would bear the ordinary property tax of a percentage on their values.
>
> "While section 1306 does not (in the case of second-hand cars) in words limit the tax to motor vehicles which actually use the highways, it imposes a tax on all complete, useable second-hand cars on the theory that they will be used on the highways." (Record, pp. 49-50.) (Italics ours.)

Finally, it is held that "The instances of ownership of complete, second-hand vehicles, in good running order, on hand and unused for a whole taxable year are extremely rare", and that the fact that absolute equality is not attained is insufficient to render the tax unconstitutional.

The majority opinion goes on the theory that the tax is primarily an excise tax and police or regulatory measure combined, and justifies the inclusion of *all* motor vehicles (except the small class of new automobiles exempted by the statute for three months while in the hands of automobile dealers and automobiles licensed in other jurisdictions and temporarily in the Territory, etc.) on the ground that the legislature was justified in laying down a conclusive presumption of user of, or intent to use, during the taxing year, the highways of the Territory in the case of every automobile held in the Territory that is "complete" and "in good running order." While it is not necessary for us to rely solely upon this theory in order to establish the validity of the tax, we believe that the position thus taken by the majority opinion is literally sustainable.

Motor vehicles are all made for use on highways —for use *solely* on highways; practically without exception they use the *public highways*, for even in those rare instances where private persons may construct and maintain private highways, those private highways are invariably of very short mileage and almost invariably connect with other, much more extensive, highways that are *public*. In fact, without the public highways to connect to, these private highways would be practically useless. Without public highways—without the availability thereof —for use by motor vehicles, they would be *useless* and therefore *valueless*. No one would care to own them; no one would buy them; no one would be able to sell them—the appellants Kitagawa and Mana Transportation Company, Limited, would be unable to carry on the very businesses for the alleged benefit of which they are attacking the tax. Small wonder, then, that the Territorial Legislature should

presume that all complete automobiles in good running order in the Territory were using, and were intended to be used on, the public highways—a presumption that we submit is unqualifiedly reasonable, and unqualifiedly supports the reasonableness of the legislative classification.

A similar presumption has in effect been supported in Minnesota. In *State* v. *Peterson* (1924), 159 Minn. 269, 198 N. W. 1011 (cited in the concurring opinion below, Record, pp. 52-53), at pages 1011-1012, the Court said:

> "For the purpose of taxation, the Legislature has created two classes of motor vehicles, placing those using the public highways in the first class, and all others in the second class. Those in the first class are taxed on the basis fixed by section 3 of the act; those in the second on the same basis as personal property in general.
>
> * * * * * *
>
> "Respondent's position logically leads to the conclusion that under section 3 of the act the owner of a car, who stores it from January 1st to August 1st and drives between August 1st and December 31st, should not be required to pay more than one-half of the tax imposed by the act, because the car first became subject to taxation thereunder on August 1st. But the amendment does not make the annual use of the public highways the criterion for determining whether a motor vehicle is within the first or the second class for the purpose of taxation in a given year. *The attorney general contends that once a motor vehicle is driven upon a public highway it automatically enters the first class, remains there as long as it can be operated, either as it is or by making ordinary repairs, and is not transferred to the second class by the act of the owner in putting it in storage.* We think the contention is sound, and

that section 16 of the act is not in contravention of the Babcock Amendment.

"In so holding we are influenced by these considerations: Constitutional provisions relating to taxation are merely limitations upon the state's inherent power to tax; they are not the source of the power. * * * The constitutional requirement is that all taxes shall be uniform on the same class of subjects. *In classifying motor vehicles for taxation as it has, the Legislature adopted past or prospective use of the public highways as the basis for classification.* The burden of taxation is uniformly imposed upon all motor vehicles in the class thus created. No classification is possible which will not result in occasional hardships. The Legislature might have provided that an automobile not operated on a public highway for an entire calendar year should be exempt in that year from the tax imposed by the act, but, if the tax in a particular year could not be collected unless the state could show that there had been a user of the highways at some time within the year, it might be difficult to enforce collection of the tax. This is a practical consideration which may have influenced the Legislature in adopting the rule prescribed by section 16. The rule has the merit of certainty—a consideration which might properly guide the exercise of legislative discretion." (Italics ours.)

To be sure, the Court in the foregoing case, stated that the tax was a *property*, not a privilege, tax, but that portion was later clearly overruled and it is now the settled doctrine of Minnesota that the tax is a combined *property and privilege* (for using the highways) tax. See *Amer. Ry. Exp. Co.* v. *Holm* (1927), 173 Minn. 72, 216 N. W. 542, 543, where the Court said:

"In our early cases * * * we considered the motor vehicle tax as a property tax. * * * In

> State v. Oligney, 162 Minn. 302, 202 N. W. 893, it was definitely announced that the tax was a property tax including an element of privilege tax. This holding is obviously right and embodies our now settled doctrine."

It is submitted that the foregoing decisions, taken together, indicate that in Minnesota the legislature has levied a tax the purpose of which, among other things, is to compensate for the use of the public highways, and has in effect laid down an arbitrary presumption—which has been sustained by the State Supreme Court—that once an automobile has been used on the public highways of the state it will continue to be so used during every succeeding taxation year until it becomes unfit for use and is therefore no longer a complete motor vehicle.

Appellants contend that the Minnesota tax is an *ad valorem* tax, but that even if true, does not weaken the force of the decision that user of the highways once is a sufficient basis for the presumption of user during every succeeding taxation period. So in the instant case, possession in the Territory of a complete motor vehicle *in good running order* ought to be a sufficient basis for the presumption of user or intended user of the public highways. As a matter of fact, while the Minnesota tax purports to be levied according to certain values at higher rates than other property, an examination of the Minnesota decisions cited in the last mentioned Minnesota case will make clear that those very values are determined arbitrarily, for several years at a time, by the Secretary of State according to manufacturers' sale price listings, even though, as recognized by the court, those listings do not represent the true values of the automobiles.

We submit, therefore, that even the arbitrary pre-

sumption of user on the public highways as a basis for including all automobiles in the taxing class, upheld in the majority opinion in the instant case below, is amply sustainable.

Let us not forget, also, that the motor vehicle tax imposed by Section 1306 is *in lieu of the general property taxes* imposed by Section 1315, Revised Laws of Hawaii 1925. *von Hamm-Young Co.* v. *Long,* 30 Haw. 260. This in itself is a most cogent reason, and material justification, for including *all* motor vehicles (except those expressly excepted by Section 1306, Revised Laws of Hawaii 1925) within the class taxed by said section.

Lieu taxes of this nature are quite common and have often been sustained, even when the tax levied in lieu of property taxes was not strictly a property tax, or even in the nature of a property tax. See, on this point, *Jasnowski* v. *Dilworth* (1916), 191 Mich. 287, 157 N. W. 891, 892-893; *State ex rel City of Fargo* v. *Wetz,* 40 N. D. 299, 168 N. W. 835, 5 A. L. R. 731, quoted *ante,* pp. 17-20; *Amer. Ry. Exp. Co.* v. *Holm,* 173 Minn. 72, 216 N. W. 542, 543, cited *ante* p. 27.

The effect of the regulatory aspect of the tax (which was held by the majority opinion below to be also a police measure) as supporting the validity thereof is not here discussed, as it is treated later in this brief (pp. 44-48). As we will there show, this feature of the tax also goes a long way towards justifying the inclusion in the taxed class of *all* motor vehicles except the small number expressly exempted.

The cases of ownership of complete motor vehicles in good running order which do not use the highways during the year are, it is submitted, so extremely rare as not to justify a holding that the tax is un-

constitutional because they do not receive the full benefit of all the privileges for which the tax (under this view of it) is designed to compensate.

There is here, we submit, no "such flagrant and palpable inequality between the burden imposed and the benefit received, as to amount to the arbitrary taking of property without compensation—to spoliation under the guise of exerting the power of taxing."

1 Cooley on Taxation (4th Ed.), p. 337.
Dane v. *Jackson,* 256 U. S. 589, 65 L. Ed. 1107, 41 Sup. Ct. 566 (cited in concurring opinion of Parsons, J., Record, p. 57).

Other circumstances supporting the reasonableness of the classification in this case, and supporting the validity of the tax are set forth *infra,* pp. 35-48, but the foregoing are sufficient even without the further ones hereinafter mentioned.

If the foregoing arguments are well taken—and we respectfully submit that they are—the tax under consideration is valid and sustainable in all respects upon the theory expressed in the majority opinion—namely, that the tax is an excise tax for the use of the highways and an exercise of the police power.

III

THE TAX CAN ALSO BE SUSTAINED ON THE THEORY THAT IT IS A COMBINED PROPERTY TAX, EXCISE TAX AND POLICE REGULATION.

A. THE THEORY OF THE CONCURRING OPINION.

Mr. Justice Parsons, in his concurring opinion (Record, pp. 51-57), takes what at first blush might

appear to be a compromise between the view of appellants (that the tax is purely and solely a property tax) and the view of the majority of the justices of the Territorial Supreme Court (which, if not analyzed, might appear to hold that the tax contains *no element* of property taxation as such but is purely an excise tax and a police measure combined). As a matter of fact, we shall show later that the majority opinion and the concurring opinion of Mr. Justice Parsons are really not far apart in their theories of the tax.

However, taking up the view expressed by Mr. Justice Parsons, we find that he held that,

> "In my view the motor vehicle tax provided by Section 1306, R. L. 1925, and its amendments is a specific tax, provided, with respect to all property within the class therein named, in lieu of the general property taxes set forth under the caption '*ad valorem* taxes' in section 1315, R. L. 1925, and its amendments; that its primary purpose is to provide public revenue, and that it is for the foregoing reasons in part at least a property tax. But even so it is a tax upon property requiring a distinct classification for the reason that the property thereby taxed is properly subject to the important license and police regulatory provisions set forth in the majority opinion, and for the further reason that the registration, transfer and use on the public highways of such property are subject to the more extensive police regulations provided by Act 197, S. L. 1929."

That the tax in question can be sustained on this theory—that it is a property tax combining therewith elements of excise and police regulation—is, we submit, amply borne out by the reasoning of Mr. Justice Parsons and by the authorities cited in his opinion, including:

American Railway Express Co. v. *Holm,* 173 Minn. 72, 216 N. W. 542, 543.

State v. *Peterson,* 159 Minn. 269, 198 N. W. 1011.
State ex rel Fargo v. *Wetz,* 168 N. W. 835, 5 A. L. R. 731, *ante,* pp. 27, 26, 17, respectively.

We will discuss this subject more in detail in a subsequent portion of this brief, when we take up the general question of the reasonableness of the classification for the purposes of this tax.

It is pertinent to note that, in the last mentioned case (as appears from the quotation therefrom, *ante,* pp. 18-20), North Dakota had (like the Territory of Hawaii in the instant case) a general property tax statute which in its terms was broad enough to include motor vehicles as subject to the general property tax, but which provided that the classification schedule adopted for such tax should be applicable only to "real and personal property subject to a general property tax, and not subject to any gross earnings or other lieu tax." (*5 A. L. R.,* 738.)

The North Dakota Supreme Court held that in view of the fact that the tax was larger than had previously been imposed for a license tax alone and that it was imposed in lieu of all other taxes, including the general *ad valorem* property tax, it was in fact a combined property and license tax and valid as such.

The same argument would apply by analogy to the tax now under consideration, and it might well be held that the tax, being in lieu of the general property tax imposed by Section 1315, Revised Laws of Hawaii 1925, as amended (as held in *von Hamm-Young Co.* v. *Long,* 30 Haw. 260) is a combined license and property tax and sustainable as such.

B. THE MAJORITY AND MINORITY OPINIONS BELOW ARE NOT IRRECONCILABLE.

Much is made in appellants' brief (pp. 20-33) of the language of the majority opinion in the instant case to the effect that "the tax is not (aside from its regulatory aspects) a tax on property," particularly so, perhaps, because it was the occasion for a mild dissent in theory in the concurring opinion.

A careful examination, however, of the majority opinion will disclose that in its actual effect it does not negative the possibility that the tax may include an element of property taxation. Thus, the expression that the tax is not *"aside from its regulatory aspects"* a property tax intimates that it may be in some aspects a tax on property.

In *von Hamm-Young Co.* v. *Long,* 30 Haw. 260, the Territorial Supreme Court had already held that the motor vehicle tax was a tax in lieu of the *ad valorem* property taxes, and if, as Mr. Justice Parsons held in his concurring opinion, this is sufficient to render it, in part at least, a property tax, then the majority and minority opinions differ only in their definitions of what "property taxes" are, a situation that can be well understood, when it is remembered that the word "tax" is the broadest generic term that can be used to indicate various impositions in the nature of taxes.

See *Hylton* v. *U. S.* (1796), 3 U. S. 171, 1 L. Ed. 556 (*ante,* p. 13).

C. THE VON HAMM-YOUNG CASE EXPLAINED.

In this connection, we pause to dispose of the construction attempted to be placed by appellants (brief, pp. 28-30) on the *von Hamm-Young* case,

supra. A mere reading of that case will disclose that the Territorial Supreme Court there held, not that the motor vehicle tax was a property tax, but merely that under it motor vehicles were property that was "otherwise taxed" within the meaning of that term as used in Section 1315, Revised Laws of Hawaii 1925 (the general *ad valorem* property tax law) and therefore were exempted from the *ad valorem* tax imposed by that section. The Territorial Supreme Court did not mention this case in its decision in the instant case, not because an attempt to do so would embarrass it, but *because the Court must have felt that the case so clearly did not even purport to pass upon the question as to whether or not the motor vehicle tax was a property tax as not even to merit mention on that question.*

D. APPELLANTS HAVE IGNORED POSSIBILITY THAT THE TAX MAY BE A COMBINATION PROPERTY AND EXCISE TAX AND POLICE REGULATION.

Appellants insist that the tax must be either a strict property tax or exclusively an excise, and every argument and authority cited on either the property tax or the excise tax phase of the subject, is based upon that theory. Appellants have thus *ignored* the obvious possibility that the tax may combine elements of both, and, in addition, an element of police regulation, and so need not conform to the strict rules of either (although, it is to be remembered that even a property tax need not, in Hawaii, be levied *ad valorem*).

Thus in *Gundling* v. *Chicago* (1900), 177 U. S. 183, 44 L. Ed. 725, 729, an ordinance imposing a tax that was larger than it otherwise might be, because the imposition was of a dual character, partaking of

both the character of a regulation and that of an excise, was upheld.

And in the very recent case of *Honolulu Rapid Transit Co.* v. *Wilder,* 36 Fed. (2d) 159, this Court upheld, on appeal from the Supreme Court of the Territory of Hawaii, a property tax based on an arbitrary assessment of the property of a corporation at the par value of its outstanding capital stock, which was admittedly three-quarters of a million dollars in excess of the true value of the property. The tax, upheld in that case, was, in reality, a combined property tax, excise and regulatory measure.

See, also, *State ex rel Fargo* v. *Wetz,* 168 N. W. 835, 5 A. L. R. 731, *ante,* cited in the concurring opinion of Parsons, J., in the instant case (Record, p. 54).

No authority has been cited by appellants holding that a tax which partakes of the character both of an excise and of a property tax must necessarily conform to the strict requirements of (1) an *ad valorem* property tax standing alone, and (2) an excise tax pure and simple. We have found none and we do not believe that appellants can.

E. THE CLASSIFICATION MADE BY SECTION 1306, REVISED LAWS OF HAWAII 1925, AS AMENDED, IS REASONABLE WITHIN THE REQUIREMENTS OF THE FIFTH AND/OR FOURTEENTH AMENDMENTS.

In the final analysis, it is submitted, the question as to the validity of this tax under the Fifth and/or Fourteenth Amendments, boils down to one of the reasonableness of the classification having in mind the various considerations, hereinafter discussed, bearing upon such reasonableness. We have in the foregoing pages, it is believed, shown that neither

the Fifth nor the Fourteenth Amendments necessarily requires all property taxes to be levied on an *ad valorem* basis. It must be, at this late date, so well recognized as to require no citation of authorities, that in so far as the Fifth and/or Fourteenth Amendments are concerned, if a given tax is based upon a reasonable classification and operates with reasonable equality under the particular circumstances upon all members of the class taxed and there can be found some practical or natural justification for it, the tax is valid.

A few decisions of the Federal Supreme Court along this line, selected at random, might be cited, however.

Thus, in *Giozza* v. *Tiernan,* 148 U. S. 657, 37 L. Ed. 599, at page 601, the court said:

> "Nor in respect of taxation was the (14th) amendment intended to compel the State to adopt an iron rule of equality; to prevent the classification of property for taxation *at different rates;* or to prohibit legislation in that regard, *special* either in the extent to which it operates or *the objects sought to be obtained by it.* It is enough that there is no discrimination in favor of one as against another of the same class. *Bell's Gap R. Co.* v. *Pennsylvania,* 134 U. S. 232 * * *; *Pacific Exp. Co.* v. *Siebert,* 142 U. S. 339. * * * And due process of law within the meaning of the amendment is secured if the laws operate on all alike, and do not subject the individual to an arbitrary exercise of the powers of government. *Leeper* v. *Texas,* 139 U. S. 462." (Italic ours.)

In *Com.* v. *Div. Canal Co.,* 123 Pa. 594, it is said:

> "Absolute equality is of course unattainable; a mere approximate equality is all that can reasonably be expected. A mere diversity in the methods

of assessment and collection, however, if these methods are provided by general laws, violates no rule of rights, if when these methods are applied the results are practically uniform * * *. Nor is classification necessarily based upon any essential differences in the nature, or, indeed, the condition of the various subjects; it may be based as well upon the want of adaptability to the same methods of taxation, or upon the impracticability of applying to the various subjects the same methods, so as to produce just and reasonably uniform results, or it may be based upon well-grounded considerations of public policy * * *."

Again, in *Mich. Cent. R. Co.* v. *Powers* (1906), 201 U. S. 245, 293, 50 L. Ed. 744, 761, it was said:

"There can at this time be no question, after the frequent and uniform expressions of the Federal Supreme Court, that it was not designed by the 14th Amendment to the Constitution to prevent a state from changing its system of taxation in all proper and reasonable ways, nor to compel the states to adopt an iron rule of equality, to prevent the classification of property for purposes of taxation, or the imposition of different rates upon different classes. *It is enough that there is no discrimination in favor of one as against another of the same class, and the method for the assessment and collection of the tax is not inconsistent with natural justice.*"

In *Roberts & Schaefer Co.* v. *Emmerson* (1926), 46 Sup. Ct. Rep. 375, 271 U. S. 50, 70 L. Ed. 827, 45 A. L. R. 1495, in upholding an Illinois statute imposing a franchise tax upon corporations of five cents on each $100 of the proportion of its capital stock, *authorized* by its charter, represented by business transacted and property located in the State, and providing further that

"In the event that the corporation has stock of no par value, its shares, for the purpose of fixing such fee, shall be considered to be of the par value of $100 per share,"

the United States Supreme Court said:

"The inequalities complained of result from a classification which, being founded upon real differences is not unreasonable, and the discrimination which results from it is not arbitrary or prohibited by the 14th Amendment. *It is enough that the classification is reasonably founded upon, or related to, some permissible policy of taxation.*" (Italics ours.)
70 L. Ed. 834.

In *Ohio Oil Co.* v. *Conway* (1930), 281 U. S. 146, 50 Sup. Ct. 310, 74 L. Ed. 775, at page 782, the court said:

"The states in the exercise of their taxing power, as with respect to the exertion of other powers, are subject to the requirements of the due process and the equal protection clauses of the 14th Amendment, but that Amendment imposes no iron rule of equality, prohibiting the flexibility and variety that are appropriate to schemes of taxation * * *. The state is not limited to ad valorem taxation. It may impose different specific taxes upon different trades and professions and may vary the rates of excise upon various products. In levying such taxes, the state is not required to resort to close distinctions or to maintain a precise, scientific uniformity with reference to composition, use or value. To hold otherwise would be to subject the essential taxing power of the state to an intolerable supervision, hostile to the basic principles of our government and wholly beyond the protection which the general clause of the 14th Amendment was intended to assure."

The court further stated that the classification

> "must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike."
> 74 L. Ed. 782.

A large number of Federal Supreme Court decisions on these general propositions are collected in *Robertson* v. *Pratt* (1901), 13 Haw. 590.

See, also, generally, *1 Cooley on Taxation* (4th ed.), secs. 247 and 249, as to the equal-protection-of-the-laws clause of the Fourteenth Amendment to the Federal Constitution, and *Id.*, sec. 143, as to "due process of law" clauses of the Fifth and Fourteenth Amendments.

Let us examine, then, the tax levied by Section 1306, with reference to these various considerations.

1. Automobiles, ever since their inception, have been regarded by legislatures and courts as constituting a general class warranting special treatment as such for various purposes, including taxation and regulation.

Allen v. *Smith,* 84 Oh. St. 283, 95 N. E. 829.
Westfalls Storage Co. v. *Chicago,* 280 Ill. 318, 117 N. E. 439.

2. Classification of motor vehicles for taxing and/or licensing purposes has been upheld where it was based on seating capacity:

Com. v. *Hawkins,* 14 Pa. Dist. R. 592;
Ayres v. *Chicago,* 239 Ill. 237, 87 N. E. 1073;

where it was based upon horsepower:

Lillard v. *Melton,* 103 S. C. 10, 87 S. E. 421;
Smith v. *Com.,* 175 Ky. 286, 194 S. W. 367;
Heartt v. *Downers Grove,* 278 Ill. 92, 115 N. E. 869;
Jackson v. *Neff,* 64 Fla. 326, 60 So. 350;
Ex Parte Schuler, 167 Cal. 262, 139 Pac. 685;

where it was based upon weight of motor vehicles:

Camas Stage Co. v. *Kozer,* 104 Ore. 600, 209 Pac. 95;
Carley & Hamilton v. *Snook,* 281 U. S. 66, 50 Sup. Ct. 204, 74 L. Ed. 704.
See, also, *Berry on Automobiles* (5th Ed.), Secs. 117 and 118;
37 *C. J.,* p. 232, sec. 86.

3. The tax in the present case is, as pointed out in the majority opinion below, designed to secure some substantial compensation to the community from the specific class of property (or the owners thereof) specially benefited and which necessitates the improvements and expense, for the enormous expense of construction, repair and maintenance of improved highways for the primary convenience of motor vehicles, and for the expense of the greatly increased police surveillance and regulation necessitated by motor vehicles. That motor vehicles, as a class, reap the primary benefit of these highways is unquestionable. It is but right, therefore, that automobiles should contribute a substantial proportion of these expenses. There is nothing contrary to "natural justice" in this.

4. Automobiles are abnormally destructive of highways (majority opinion, Record, p. 44); they may therefore properly be subjected to special taxation to maintain the same (majority opinion, Record, p. 44).

Hendrick v. *Maryland* (1915), 235 U. S. 610, 59 L. Ed. 385.

In this connection, taxation according to weight is reasonable, because, as pointed out in the majority opinion (Record, pp. 44-45), in general the heavier the car, the greater the destruction wrought to the highways.

See *Carley & Hamilton* v. *Snook* (1930), 281 U. S. 66, 50 Sup. Ct. 204, 74 L. Ed. 704.

5. The court must certainly be aware that many owners or operators of automobiles own little or no other taxable property, yet they use the highways and reap the benefits of the expenditures made therefor by the general property owners who pay the general property taxes. A special method of taxation to reach all automobile owners or operators, even to make them contribute a higher rate than other property, is therefore not uncalled for. In this connection the Court's attention is called to the fact that although the motor vehicle tax in Hawaii is paid into the "Road Fund," under Section 1309 of the Revised Laws of Hawaii 1925, this is not the only fund available for construction, reconstruction and maintenance of highways in each county. Under Section 1315, Revised Laws of Hawaii 1925, as amended, general property taxes may also be levied for these purposes. Thus, Section 1315 provides as follows:

> "Sec. 1315. *General property taxes.* Except as exempted or otherwise taxed, all real property and all personal property within each taxation division, shall be subject to a tax each year of such rate per cent upon the full cash value thereof as shall be fixed and determined for that year in the following manner and generally for the following purposes:
>
> "1. County or city and county current expenses;
>
> "2. County or city and county permanent improvements;
>
> "3. Interest on term and serial bonds, sinking fund for term bonds, and principal of all serial bonds maturing the following year;

"4. Interest and sinking fund for all territorial bonds issued for county or city and county purposes;

* * * * * *

"In subdivision 1 (county or city and county current expenses) shall be included * * * road maintenance and repair and other current or general needs.

"In subdivision 2 (county or city and county permanent improvements) shall be included all items for permanent improvements for the counties and city and county, including * * * new road construction of portland cement concrete, asphaltic concrete, asphalt macadam or on a portland cement concrete base, including cost of new land, or large cuts or fills in the grade, of permanent storm drains, of new bridges of like or equivalent permanent nature, and reasonable engineering and inspection expenses for the same (except that, in the case of the counties of Hawaii, Maui and Kauai, roadwork, amounting to reconstruction, of asphalt or oiled macadam may be performed hereunder in addition to concrete roadwork; * * *."

6. Practically all motor vehicles use the public highways; in fact they are made *solely for use on the highways;* without such highways—the availability thereof for use by such vehicles—practically no one would care to own them; they would be useless and therefore valueless; instances of ownership in vehicles in running order and non-use throughout the whole year are, as stated in the majority opinion below (Record, pp. 49, 50), extremely rare. This is a factor pointing to the reasonableness of including *all* motor vehicles, without regard to actual user of the public highways, in the class taxed. Substantial equality of treatment is in fact attained thereby, because of the *extreme rarity* of non-use of such highways by members of the class. We submit that

the opinion of the Territorial Supreme Court (majority) on this point is amply sustainable (see also discussion on this point, *ante,* pp. 25-29).

7. It would be impracticable to base the liability to the tax upon actual user of the public highways or upon the extent of such user.

State v. *Peterson* (1924), 159 Minn. 269, 198 N. W. 1011, 1012.

This special difficulty or circumstance tends to support the reasonableness of taxing all vehicles regardless of user.

8. The tax is in lieu of all other property taxes: This is one of the most potent factors in rendering reasonable the application of the tax to all vehicles, regardless of user of the highways; it also justifies making the rate or amount of the tax higher than on other species of property, since the tax, besides being in lieu of general property taxes, is also designed to secure compensation for special privileges as well as for special police regulation. (See discussion and authorities cited, *ante,* p. 29.)

9. Appellants lay much stress upon the alleged fact that there are large plantations in the Territory owning their own roads and operating their own vehicles upon such roads, which, it is claimed, makes it unjust to charge them for the tax. In the first place, there is nothing in the record to justify such allegations; and in the second place, it is strange that the tax has stood for a quarter of a century and none of these plantations has felt oppressed enough to feel justified in attacking the tax on that ground.

10. As to any claim of hardship or injustice, the very fact that the tax has stood for such a long time without question indicates conclusively, we submit, that it has proved just in its practical operation,

even applied to any special conditions that might exist in the Territory.

11. It is matter of common knowledge that automobiles today are one of the most potent aids to criminals in the perpetration of crimes. The requirement that *all* motor vehicles in the Territory be licensed and numbered is a necessary police regulation for the purpose of assisting in the prevention and detection of crime; otherwise criminals could keep unlicensed automobiles under the claim that they would not be used on the highways, then use the same in the perpetration of crime, and, their cars being unnumbered, escape with less chance of detection than would be the case if all cars were numbered. Also, permitting cars to be kept unlicensed would enable any person to claim that his cars would not be used on the public highways and such person could then purchase a license for one car and transfer the plates at will to each of the others whenever he wished to use the same, thus escaping his full share of contribution for the use of the highways. It would be very difficult to detect such frauds.

12. It is also unquestionable that automobiles are dangerous instruments; even when properly operated, they are a source of constant danger to persons and property. (See *Allen* v. *Smith,* 84 Oh. St. 283, 95 N. E. 829; *Hendrick* v. *Maryland,* 235 U. S. 610, 59 L. Ed. 385; *Westfalls Storage Co.* v. *Chicago,* 280 Ill. 318, 117 N. E. 439.) They are almost without exception propelled with gasoline or other highly explosive substances, and, even when not in use, may be dangerous because they usually contain such substances; it is but proper for the Territory to require that every such vehicle be registered, so that all can be properly inspected, so that the Government will know at all times just who owns and is responsible

for each vehicle, and can reach the owner or responsible person in case of violation of any of the numerous police regulations that are necessitated by the use of automobiles; so that if a person is struck by a vehicle the person or other witnesses can secure the license number and identify the owner, and through him the person who was operating the car, in case such person escapes; to permit any such vehicles to be unregistered is to invite wholesale evasion of the tax and with it evasion of the numerous other police regulations which have grown up around the automobile and its use, such as regulations relating to heedless driving, driving while drunk, driving without a license, "hit-and-run" driving, so-called, exceeding speed limits, etc. Appellants argue (brief, pp. 32-33) that evaders can easily be detected and apprehended because they will be found without licenses. But this argument is wholly fallacious; for, certainly, persons who are determined to evade the law will not wait to be apprehended; they will certainly attempt to escape when detected, and, if the vehicles are unnumbered, it will be almost impossible, in many cases, to identify the vehicles as the ones which were used in the violations.

13. Furthermore, even if persons might bona fide keep vehicles on private premises without any intent to use the same on the highways during a given year, there is always the possibility that the vehicles will be stolen, or used without authority, or even used by the owners in case of emergency, and it is necessary, therefore, for the purposes of police regulation, if for nothing else, that every one of them be registered and licensed.

14. Note that the statute itself requires: that upon registration the treasurer of the county shall keep a permanent record of the vehicle and the own-

er's name; that the owner attach the number plates issued upon such registration to the vehicle; that the treasurer of each county shall notify the sheriff of his county of the registration of all motor vehicles and that the sheriff is to "record such numbers, description of motor vehicles and names and addresses of the owners to whom such numbers are issued in a permanent record or book to be kept by him for this purpose." All of these are police measures coordinated with the taxing statute, and the expense of this regulation is included in the amount of the tax. There is nothing in the complaints of appellants or the record to indicate that the amount of the fee charged is excessive in view of the service rendered, or even to show what the reasonable cost of such service is, and we submit that the amount is not so large as of itself to justify the Court in presuming that it is excessive. The burden is upon appellants to show, if they can, that such is the case, and they have not even attempted to do so. Rather, each of the complaints has proceeded upon the sole ground that the tax is a property tax alone, and invalid on that alleged ground, because not proportioned according to the actual value of each vehicle.

15. It should also be remembered that the purpose of the regulatory features of this statute is in part to prevent or minimize the theft of automobiles, a vice all too prevalent throughout the United States, and, strangely enough, prevalent even in these small islands where the thief cannot possibly escape to another island or to the mainland or a foreign country with his loot; the fact that every vehicle is numbered enables the police in many instances almost immediately to detect the thieves and recover the stolen vehicles before much damage is suffered. All owners of motor vehicles receive this

protection: both those who use and those who do not use (if there are any such) the highways; it is just as possible for automobiles to be stolen from private premises as from the highways; and if all are numbered distinctively and differently, it is that much easier to recover them if stolen.

16. Finally, it must not be overlooked that, since 1929, at least, there have existed in the Territory other police regulations depending solely upon the statute now under consideration, relating to motor vehicles. We refer to Act 197 of the Session Laws of Hawaii 1929, referred to in the concurring opinion of Mr. Justice Parsons. This Act is given in full in the appendix following this brief, for the convenience of the Court. Without the registration and licensing provided for by Section 1306, Revised Laws of Hawaii 1925, these regulations would be ineffective. Cannot, therefore, the tax be also considered as in part compensation for the expense of such regulation; and, if so, cannot it be said that the amount of the tax is not so great as to require this Court to presume, in the absence of any evidence or even any allegations, that the amount is excessive? We submit that it can; and that, if it can, it should.

To indicate that the foregoing arguments to the effect that the added police regulation necessitated by motor vehicles requires large expenses, to compensate for which it is proper that automobile owners should contribute specially, are not fanciful, we need only to refer to an enactment by the Territorial Legislature at its regular session of 1929. By Act 195 of the Session Laws of Hawaii 1929, Section 1309 of the Revised Laws of Hawaii 1925 was amended so as to permit the City and County of Honolulu to expend, from its "road fund" (into which all taxes collected under Section 1306 are paid and

which fund is used for the construction and maintenance of public roads) "up to the sum of one hundred thousand dollars ($100,000.00) from said fund for the providing of additional police officers." Section 1309, as amended, reads in full as follows:

> "SEC. 1309. *Disposition of taxes so collected.* All taxes collected under the provisions of sections 1306, 1307 and 1308 shall be kept in a fund to be known as 'road fund' and expended on the construction, maintenance and repairs of public roads and highways of the county or city and county in which the same are collected. It being provided, however, that in the City and County of Honolulu the board of supervisors may expend up to the sum of one hundred thousand dollars ($100,000.00) from said fund for the providing of additional police officers."

The foregoing considerations amply support the findings of both the majority and minority opinions of the Territorial Supreme Court to the effect that the tax in question is at least in part an excise and regulatory measure, and that the classification is reasonable. Can this Court, in the face of a finding of the Territorial Legislature (as in effect it is) that the amount of the fee is reasonable in view of all the considerations above mentioned, and in the face of a finding by, first a Circuit Court, and then the Supreme Court of the Territory to the same effect, find that the amount of the fee is so exorbitant as to justify this Court in presuming it excessive? We submit, not.

SUMMARY OF FIRST THREE POINTS.

From what has been said in the foregoing pages of this brief, it must be clear that the appellees in this

case are under no necessity of establishing the tax in question either exclusively as a property tax, or as an excise tax and police measure, or as a combination of all three, in order to sustain the validity of the tax. It is amply sustainable on any of these three theories. Personally, we feel that the most reasonable theory is that the tax is a combined property tax, excise tax and police measure, in line with the broad theory expounded by Mr. Justice Parsons in his concurring opinion. Whatever theory is adopted, however, the tax is sustainable, and we so submit.

IV.

AS TO THE QUESTION OF EQUITY JURISDICTION.

A portion of appellants' brief is devoted to arguments designed to establish the jurisdiction of a court of equity to pass upon a case of this nature and to demonstrate that, as contended by appellants, they have no adequate remedy at law.

In view of the attitude of the Territorial Supreme Court in not considering the point, and also in order not to unduly lengthen this brief, the point is not here specifically considered. It will be taken up at the oral argument, should this Court so desire.

V.

AS TO THE AUTHORITIES CITED IN APPELLANTS' BRIEF.

For the sake of brevity, and because the decisions cited in appellants' brief (not herein specifically considered) can all be distinguished or explained by the general arguments and principles set forth

in this brief (except possibly those cited upon the question of alleged equity jurisdiction), these decisions have not herein been specifically considered or distinguished. They will be discussed as far as necessary in the oral argument before this Court.

CONCLUSION

In conclusion, we submit that the main, perhaps the only, point really before this Court on the question of the constitutionality of the tax under consideration is whether the classification made by the statute is reasonable and justifiable. This reasonableness and justification has, we believe, been conclusively established. It is respectfully submitted, therefore, that the judgment of the Supreme Court of the Territory of Hawaii upholding the tax imposed by Section 1306 of the Revised Laws of Hawaii 1925, as amended by Act 180 of the Session Laws of Hawaii 1925, and by Acts 33, 172 and 246 of the Session Laws of Hawaii 1927, should be sustained.

DATED at Honolulu, T. H., October 19th, 1931.

Respectfully submitted,

H. R. HEWITT,
Attorney General of the Territory of Hawaii.

C. NILS TAVARES,
Second Deputy Attorney General, Territory of Hawaii.

E. R. McGHEE,
Third Deputy Attorney General, Territory of Hawaii.

W. H. BEERS,
County Attorney of the County of Hawaii, and Deputy Attorney General.
Attorneys for Appellees.

APPENDIX.

ACT 197.

(S. B. No. 110.)

AN ACT RELATING TO MOTOR VEHICLES AND THE REGISTRATION THEREOF.

Be it Enacted by the Legislature of the Territory of Hawaii:

SECTION 1. Application for Registration.

(a) Every owner of a motor vehicle which shall be operated upon the public highways of this Territory shall, for each vehicle owned, except as herein otherwise provided, apply to the County Treasurer of the county where such vehicle is to be operated, for the registration thereof.

(b) Application for the registration of a vehicle herein required to be registered shall be made upon the appropriate form furnished by the County Treasurer and shall contain the name, occupation and address of the owner and legal owner and if the applicant is a member of the United States Naval or Military forces, the applicant shall give his organization and station. All applications shall also contain a description of the vehicle, including the name of the maker, the motor number and the date first sold by the manufacturer or dealer to the consumer, and such further description of the vehicle as shall be called for in the form, and such other information as may be required by the County Treasurer, to establish legal ownership.

(c) In the event that the vehicle to be registered should be specially constructed, reconstructed, or an

imported vehicle, such fact shall be stated in the application and upon the registration of every imported motor vehicle, which has been registered theretofore in any other state or country, the owner shall surrender to the County Treasurer his certificates of registration or other evidence of such form of registration as may be in the applicant's possession or control.

(d) The provisions of this Act requiring the registration of motor vehicles shall not apply to special mobile equipment nor to implements of husbandry temporarily drawn, moved, or otherwise propelled upon the public highways.

SECTION 2. It shall be the duty of the County Treasurer to examine and to the best of his ability to determine the genuineness and regularity of every registration and transfer of registration of a vehicle as in this Act provided, in order that every certificate issued for a vehicle shall contain true statements of the ownership thereof, and to prevent the registration of a vehicle by any person not entitled thereto, and the County Treasurer is hereby authorized to require any applicant to furnish such information, in addition to that contained in the application, as may be necessary to satisfy the County Treasurer of the truth and regularity of the application.

SECTION 3. The County Treasurer is hereby authorized to assign a distinguishing motor number to the motor in any motor vehicle where the motor number thereof shall be destroyed or obliterated. Any person destroying or obliterating any motor number on a motor vehicle shall be guilty of a misdemeanor and shall be punished as provided in Section 15 of this Act.

SECTION 4. The County Treasurer in the county where the application for registration is made, shall file each application received and register the vehicle therein described in the owner's name in a permanent record or book to be kept by him for this purpose, as follows:

(1) Under a distinctive registration number assigned to the vehicle and to the owner thereof hereinafter referred to as the registration number.

(2) Alphabetically under the name of the owner;

(3) Numerically under the motor number of the vehicle;

(4) The County Treasurer may also register such vehicle under the serial number of such vehicle or otherwise in his discretion.

SECTION 5. A full record of all vehicles registered shall be posted daily by the County Treasurer in a public place in or about his office.

SECTION 6. Upon the registration of a vehicle, the County Treasurer shall issue a certificate of registration to the owner and a certificate of ownership to the legal owner, which certificates shall meet the following requirements:

(1) Both the certificate of registration and the certificate of ownership shall contain upon the face thereof the date issued, the registration number assigned to the owner and to the vehicle, the name and address of the owner and legal owner in typewriting, also such description of the registered vehicle as may be determined by the County Treasurer;

(2) The reverse side of the certificate of ownership only shall contain forms for notice to the County Treasurer of a transfer of the title or interest of

the owner or legal owner and application for registration by the transferee.

(3) Containers. Whenever a vehicle is first registered hereunder, the County Treasurer shall issue a suitable container with the certificate of registration issued for such vehicle. Every owner upon receipt of a certificate of registration shall place the same in the container furnished therewith or heretofore furnished and shall securely fasten the same in plain sight within the driver's compartment of the vehicle for which such certificate is issued, or in the event the vehicle is a motorcycle, shall fasten the certificate of registration thereto in plain sight or carry such certificate in the tool bag or other convenient receptacle attached to such vehicle.

SECTION 7. Every motor vehicle as aforesaid within the Territory of Hawaii shall be registered under this Act as of January 1st, 1930, such registration to be made prior to March 1st, 1930, and every registration under this Act shall expire on January 31st of each year and shall be renewed annually before March 1st of each year, upon application to be determined by the County Treasurer, such renewal to take effect on the first day of January of each year. Certificates of registration and ownership furnished by the County Treasurer as in this Act provided shall be valid during the registration year only for which they are issued.

The provisions of this Act shall be administered by the Treasurer in conjunction with the requirements of Section 1306 of the Revised Laws of Hawaii 1925, as amended, and shall entail no additional expense or charge to the person registering the ownership of a motor vehicle other than now provided by law and the cost of container provided for in Section 13 hereof.

SECTION 8. (a) Upon a transfer of the title or interest of a legal owner or owners in or to a vehicle registered under the provisions of this Act as hereinbefore required, the person or persons whose title or interest is to be transferred and the transferee shall write their signatures with pen and ink upon the certificate of ownership issued for such vehicle, together with the address of the transferee in the appropriate space provided upon the reverse of such certificate.

(b) Within ten days thereafter, the transferee shall forward both the certificate of ownership so indorsed and the certificate of registration to the County Treasurer, who shall file the same upon receipt thereof.

(c) The provisions of subdivision (b) of this section, requiring a transferee to forward the certificate of ownership after indorsement and the certificate of registration to the County Treasurer, shall not apply to the transferee of a vehicle who was not intending to and does not drive such vehicle or permit such vehicle to be driven upon the public highways, but every such transferee shall, upon transferring his interest or title to another, give notice of such transfer to the County Treasurer and indorse the certificate of ownership to the new legal owner and the certificate of registration to the new owner.

(d) The County Treasurer, upon receipt of the certificate of ownership properly indorsed as required herein and the certificate of registration of such vehicle, shall register such vehicle as hereinbefore provided with reference to an original registration, and shall issue to the owner and legal owner entitled thereto by reason of such transfer a new certificate of registration and certificate of owner-

ship, respectively, in the manner and form hereinabove provided for original registration.

(e) Until said County Treasurer shall have issued said new certificate of registration and certificate of ownership as hereinbefore in subdivision (d) provided, delivery of such vehicle shall be deemed not to have been made and title thereto shall be deemed not to have passed, and said intended transfer shall be deemed to be incomplete and not to be valid or effective for any purpose.

(f) In the event of the transfer by operation of law of the title or interest of legal owner or owners in and to a vehicle registered under the provisions of this Act, as upon inheritance, devise or bequest, order in bankruptcy, or insolvency, execution sale, repossession upon default in performance of the terms of a lease or executory sales contract, or otherwise than by the voluntary act of the person whose title or interest is so transferred, the certificate of ownership shall be signed upon the reverse thereof by the executor, administrator, receiver, trustee, sheriff or other representative or successor in interest of the person whose title or interest is so transferred in lieu of such person. Every such executor, administrator, receiver, trustee, sheriff or other representative hereinabove referred to shall file with the County Treasurer a notice of any transfer by sale, lease, or otherwise by him or it, of any such vehicle, together with evidence satisfactory to the County Treasurer of all facts entitling such representative to make such transfer.

(g) Nothing in the foregoing subdivisions of this Section shall prevent a legal owner from assigning his title or interest in or to a vehicle registered under the provisions of this Act to another legal owner without the consent of and without affecting the in-

terest of the holder of the certificate of registration thereof. Upon filing with the County Treasurer of a certificate of ownership indorsed by the legal owner and a transferee of legal ownership, the County Treasurer shall enter the name of the new legal owner upon the records of his office, and shall issue a new certificate of ownership to the new legal owner in the form hereinbefore provided for original registration; upon so doing the County Treasurer shall send to the registered owner a notice by mail of such action.

(h) Any person who refuses or neglects to deliver a certificate of ownership to a transferee entitled thereto under the provisions of this Act, shall be guilty of a misdemeanor and shall be punished as provided in Section 15 of this Act.

(i) Every dealer, upon transferring a motor vehicle, whether by sale, lease or otherwise, shall immediately give notice of such transfer to the County Treasurer upon the official form provided by the County Treasurer. Every such notice shall contain the date of such transfer, the names and addresses of the transferer and transferee, and such description of the vehicle as may be called for in such official form.

SECTION 9. (a) A manufacturer of or dealer in motor vehicles having an established place of business in this Territory, owning any such vehicles and operating them upon the public highways exclusively for the purposes of his business, in lieu of registering each such vehicle, may make application upon an official blank provided for that purpose to the County Treasurer for a general distinguishing number or symbol.

(b) Upon receipt of such application, the County

Treasurer shall issue to the applicant a certificate of registration, containing the latter's name and business address and the general distinguishing number or symbol assigned to him in such form and containing such further information as the County Treasurer may determine, and every vehicle owned or controlled by such manufacturer or dealer, and permitted to be registered under a general distinguishing number, while being operated for the purposes of his business only, shall be regarded as registered thereunder until ten days after being sold.

(c) The County Treasurer shall also, upon receipt of such application, or thereafter, furnish to the manufacturer or dealer one or more pair of automobile plates or single plates for other vehicles required by the applicant, and every such plate shall have displayed upon it the registration number which is assigned to the applicant, with a different letter or symbol on each pair of automobile number plates and on each single plate for other vehicles.

(d) No such manufacturer or dealer shall operate any motor vehicle, owned or controlled by him, upon any public highway or permit it to be so operated, unless number plates assigned to him are attached thereto, in the manner hereinbefore specified in this Act, excepting only that it shall be permissible for such manufacturer or dealer to operate any such vehicle without number plates attached thereto from any vessel, railroad depot or warehouse over the public highways, to the salesrooms or other place of business of such manufacturer or dealer, or to a warehouse or other place of storage.

Every such manufacturer or dealer, upon the sale, lease or other transfer by him of a vehicle registered under a general distinguishing number, as herein provided, shall forthwith give notice of such trans-

fer to the County Treasurer upon the appropriate official form, stating therein the date of such transfer, a description of such vehicle and the name and post office address of the transferee.

(f) The County Treasurer may, at his discretion, grant a temporary permit to operate a vehicle for which registration has been applied.

SECTION 10. (a) A non-resident owner of a motor vehicle which has been duly registered for the current year in the state or county of which the owner is a resident and in accordance with the laws thereof, may, in lieu of registering such vehicle as otherwise required by this Act, apply to the County Treasurer for the registration thereof as provided in this section.

(b) A non-resident owner shall, within ten days after commencing to operate such vehicle or causing or permitting it to be operated within this Territory, apply to the County Treasurer for the registration thereof upon the appropriate official form stating therein the name and home address of the owner and the temporary address, if any, of the owner while within this Territory, the registration number of said vehicle as assigned thereto in the state or territory in which the owner is a resident, together with such description of the motor vehicle as may be called for in the form and such other statements of facts as may be required by the County Treasurer.

(c) The County Treasurer shall file every application received and register the vehicle therein described and the owner thereof in suitable books or on index cards, and shall, without charge, issue to the owner a registration certificate of a distinctive form containing the date of its issue, a brief descrip-

tion of the vehicle and a statement that the owner has procured registration of such vehicle as a non-resident.

(d) No non-resident owner of a motor vehicle shall operate any such vehicle or cause or permit it to be operated upon the public highways of this Territory, either before or while it is registered under this section, unless there shall at all times be displayed thereon the registration number plates assigned to said vehicle for the current calendar year by the country or state of which such owner is a resident, nor unless the certificate of registration, when issued thereto as in this section provided, shall be placed on the wind-shield of said motor vehicle in the manner to be specified by the County Treasurer.

(e) Every certificate of registration issued pursuant to this section shall be valid not to exceed three months from the date of its issuance.

SECTION 11. In the event that any certificate of registration or certificate of ownership shall be lost, mutilated or shall have become illegible, the person to whom the same shall have been issued shall immediately make application for and may obtain a duplicate thereof upon furnishing satisfactory information to the County Treasurer.

SECTION 12. The following words and phrases used in this Act shall have the meaning herein ascribed to them:

(1) "Treasurer" or "County Treasurer." The term "Treasurer" or "County Treasurer" shall be deemed to mean and include the County Treasurers of the several counties of this Territory and their respective deputies, as well as the Treasurer of the City and County of Honolulu and his deputies.

(2) "Motor Vehicle." Every vehicle as herein described which is self-propelled.

(3) "Person." Every natural person, firm, co-partnership, association or corporation.

(4) "Owner." A person having the lawful use or control or the right to the use or control of a motor vehicle under a lease or otherwise for a period of ten or more successive days.

(5) "Legal Owner." A person who holds the legal title to a motor vehicle or a mortgage thereon.

(6) "County." Every county and city and county within the Territory of Hawaii.

SECTION 13. The container referred to in paragraph three of Section 6 shall be furnished by the Treasurer, for which he shall charge a sum not to exceed fifty cents.

SECTION 14. All motor vehicles owned by any foreign government or by a consul or other official representative thereof, or by the United States Government, or by the Territory of Hawaii or any political subdivision thereof, shall be registered as herein required by the person having the custody thereof, and such custodian shall display official registration by distinguishing marks thereon which shall be furnished by the Treasurer, free of charge, and where motor vehicles are owned by the Territory of Hawaii or any of its municipal subdivisions, such motor vehicle shall bear the inscription provided for in Chapter 20 of the Revised Laws of Hawaii 1925.

SECTION 15. Any person who shall violate any of the provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than Five, nor more than One Thousand, Dollars or by imprisonment for

a term not exceeding one year, or by both such fine and imprisonment.

SECTION 16. All laws or parts of laws in conflict with or repugnant to any of the provisions of this Act are hereby repealed, but nothing herein contained shall be construed to amend or repeal Chapter 20 of the Revised Laws of Hawaii 1925, or any part thereof, or Section 1306 of the Revised Laws of Hawaii 1925, as amended, or any part thereof.

SECTION 17. This Act shall take effect upon its approval.

Approved this 1st day of May, A. D. 1929.

W. R. FARRINGTON,
Governor of the Territory of Hawaii.